



BEFORE THE STATE BOARD OF EQUALIZATION  
OF THE STATE OF CALIFORNIA

In the Matter of the Appeal of  
ESTATE OF HARRIET ALLEN HEATH,  
DECEASED, LEWIS F. MARQUIS AND  
JOHN R. HEATH, CO-EXECUTORS

Appearances:

For Appellant: John R. Heath, Co-Executor

For Respondent: Paul L. Ross, Associate Tax Counsel

O P I N I O N

This appeal is made pursuant to Section 19059 of the Revenue and Taxation Code from the action of the Franchise Tax Board in denying the claim of the Estate of Harriet Allen Heath for refund of personal income tax in the amount of ~~\$13,693.46~~ for the year ended May 31, 1949.

Harriet Allen Heath died on December 2, 1947. By the terms of her will she left half of her estate and two thirds of the residue to her husband, John E. S. Heath. The remaining one third of the residue she left to the Allen Memorial Foundation of California, a charitable organization. Certain bequests were also made to other persons, A fiscal year ending May 31 was adopted for her estate,

Jahn E. S. Heath died on September 11, 1948, By the terms of his will he left the residue of his estate to the Allen Memorial ~~Foundation of~~ California and the Allen Memorial Hospital Corporatdon of Iowa, which is also a charitable organization,

So far as material in this appeal, Section 18132 of the Revenue and Taxation Code provides:

"There shall be allowed as a deduction ... in computing the net income of the estate or trust, any part of the gross income, without limitation, which pursuant to the terms of the will or deed creating the trust is during the taxable year paid or permanently set aside for **(charity)**."

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The Appellant estate has been allowed a deduction for the amount specifically made payable to the charity made in the will of Mrs. Heath. However it contends that it is also entitled to a deduction of the remainder of its income during the year in question which was destined to be paid to charity through the will of Mr. Heath. The position of the Franchise Tax Board is that these amounts were not payable to charity "pursuant to the terms of the will" of Mrs. Heath.

Appellant states that a narrow construction would defeat the beneficent purpose of the statute and points out that a tax upon the income in question will decrease the amount which will go to charity. In support of its position it cites Old Colony Trust Company v. Commissioner, 301 U.S. 379; United States v. Provident Trust Co., 221 U.S. 272; Lederer v. Stockton, 260 U.S. 99; and Union and New Haven Trust Co. v. Eaton, 20 Fed. 2d 419.

Of those cited, the case most nearly in point and most favorable to Appellant is Old Colony Trust Company v. Commissioner. That case involved the federal counterpart of Section 18132. It was there held that a trust could properly deduct payments to a charity made under a provision of the trust deed authorizing such payments in the discretion of the trustee. The court stated:

We are asked to hold that the words "pursuant to" mean directed or definitely enjoined. And this notwithstanding the admission that Congress intended to encourage charitable contributions by relieving them from taxation ..."

"'Pursuant to' is defined as 'acting or done in consequence or in prosecution (of anything); hence, agreeable; conformable; following; according.\*"

"The words of the statute are plain and should be accorded their usual significance in the absence of some dominant reason to the contrary..."

It is true that the cases cited by Appellant advocate a liberal construction of the statute. However, the Appellant has shown us no case, and we have discovered none in which the deduction was upheld where there was no authorikation in the will or trust instrument for making the charitable gifts. To the contrary, it has been held that the estate is not entitled to a deduction where there is no provision in the will for the payment to charity (Heywood, et al, Executors, 11 B.T.A. 29. See also Moorman Home for Women v. United States, 42 Fed. 2d 257).

Appeal of Estate of Harriet Allen Heath, deceased.

It has not been made apparent to us why a different result should follow here due to the circumstance that the death of Mr. Heath so soon followed that of Mrs. Heath. The estate of Mrs. Heath did not make a gift of the income involved to charity. The income was payable to the estate of Mr. Heath, and the gifts were to be made by virtue of his will. If the executors of Mrs. Heath had given the money to charity they would have done so in contravention of her will. It cannot reasonably be said that the income was permanently set aside for charity "pursuant to the **terms**" of her will, nor would the purpose of the statute, the encouragement of charitable donations, be served by granting a deduction to her estate. The fact that the tax may decrease the amount which will ultimately go to charity cannot justify overriding the plain requirement of the statute.

O R D E R

Pursuant to the views expressed in the opinion of the Board on file in this proceeding and good cause appearing therefor,

IT IS HEREBY ORDERED, ADJUDGED AND DECREED, pursuant to Section 19060 of the Revenue and Taxation Code, that the action of the Franchise Tax Board in denying the claim of the Estate of Harriet Allen Heath for a refund of personal income tax in the amount of \$13,693.46 for the year ended May 31, 1949, be and the same is hereby **sustained**.

Done at Los Angeles, California, this 14th day of November, 1955, by the State Board of Equalization.

J. H. Quinn, Chairman

Paul R. Leake, Member

Geo. R. Reilly, Member

Robert E. McDavid, Member

Robert C. Kirkwood, Member

ATTEST: Dixwell L. Pierce, Secretary